IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 147 OF 2006

Shantilal Gulabchand Shah.] .. Petitioner

Versus

1. The Chief Executive Officer & ors.] .. Respondents

Mr. S.R. Redkar for the petitioner.

Mr. G.P. Uttangale i/b Uttangale & Co. for the respondents No.1 and 2.

Mr. Milind More, AGP for respondent - State.

Mr. D.S. Sakhalkar for respondent No.4.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 06TH MARCH, 2006

P.C. :

. It is a case of the petitioner that he had two shops. However, he has been allotted only one shop and consequently the present Petition. It is a case of the petitioner that considering DCR 33(7) he ought to be entitled to two shops. His case was considered by the competent authority who, by an order dated 10th December, 2002, has recorded the finding that this is a development under DCR 33(10) and in case of commercial structure, the petitioner is entitled to actual area or

225 sq. ft., whichever is less. A finding of fact has been recorded that the original area of the shops in possession of the petitioner is 263.40 sq. ft. and as such, what the petitioner is entitled to is 225 sq. ft.

2. On behalf of the petitioner, learned counsel drew our attention to an unreported judgment of this Court in the case of **John F. D'Costa & ors. Vs. The Commissioner, Mumbai Municipal Corporation & ors. [Writ Petition (L) No.624 of 2005]**. A perusal of the findings therein would indicate that the development there was in amalgamated project viz. both under DCR 33(10) and DCR 33(7). It is on the facts of that case that the learned Bench of this Court was pleased to pass an order as passed therein.

3. In the instant case, even though the petitioner's land was held by him from the Corporation nonetheless on a development scheme being framed in terms of clause 1.12 there is an automatic cancellation of vacant land tenure. In terms of clause 5.3 in the matter of commercial area, a person entitled would get a built up area of 225 sq. ft. This being purely a case of development under regulation 33(1), what the petitioner is entitled to is in terms of clause 5.3 which has been allotted to the petitioner. Once that be

the case, no case made out for interference.

4. Hence Petition disposed of.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]